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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA

4 v.

17 CR 47 (VM)

5 MAHMOUD THIAM,

Bail Application

6 Defendant.

7 -----x

8 New York, N.Y.  
9 January 31, 2017  
2:00 p.m.

10 Before:

11 HON. VICTOR MARRERO

12 District Judge

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15  
16  
17 APPEARANCES

18 PREET BHARARA

19 United States Attorney for the  
20 Southern District of New York

21 ELISHA KOBRE

Assistant United States Attorney

22 PAUL E. SUMMIT

23 CAITLIN FAHEY

Attorneys for Defendant

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1 THE COURT: This is a proceeding in the matter of  
2 United States v. Thiam. It's docket No. 17 Cr. 0047.

3 Counsel, please enter your appearances for the record.

4 MR. KOBRE: Good afternoon, your Honor, Elisha Kobre,  
5 Jason Linder, and Lorinda Laryea, for the government. And  
6 Jason Linder and Lorinda Laryea are trial attorneys for the  
7 criminal division of the Department of Justice, whose flight  
8 had been unexpectedly cancelled yesterday so they are appearing  
9 here today.

10 THE COURT: Welcome.

11 MR. LINDER: Thank you.

12 MR. SUMMIT: Good afternoon, your Honor.

13 Paul Summit, of Sullivan & Worcester, with Caitlin  
14 Fahey of Sullivan & Worcester, and our client Mahmoud Thiam.

15 THE COURT: Thank you.

16 We commenced this hearing yesterday on the defendant's  
17 application for bail release. We heard arguments from the  
18 defendant and a response from the government. We adjourned to  
19 today to continue the hearing.

20 I will allow the defendants now to respond to the  
21 government's presentation, and then I will allow the government  
22 one other opportunity. At that point we will close the  
23 hearing.

24 MR. SUMMIT: I appreciate that, your Honor.

25 THE COURT: Mr. Summit.

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1 MR. SUMMIT: Thank you. I appreciate the additional  
2 time, your Honor.

3 Yesterday I began by saying that this is a case that  
4 cries out for judicial intervention, and I think the argument  
5 that your Honor heard yesterday confirms that. The government  
6 has the burden, and they had to show flight risk -- first, they  
7 had to show a risk of flight. Then they had to show that no  
8 conditions of confinement would reasonably assure Mr. Thiam's  
9 return.

10 The initial hearing was all about U.S. bank  
11 accounts -- plural, bank accounts -- that Mr. Thiam had hid,  
12 and we demonstrated that the government was in error. They  
13 have now said, Oh, sorry, we don't know about any U.S. bank  
14 accounts concealed by Mr. Thiam. I will go on in a moment, but  
15 there is a certain whack-a-mole quality to this whole  
16 proceeding: They waft something up, it fails; they waft  
17 something else up.

18 So the U.S. bank account attack failed. Magistrate  
19 Judge Francis ruled as he did based on representations that  
20 turned out to be wrong.

21 Now they move to the Dutchess County house. And I'm  
22 not going to reiterate all that we went through yesterday, your  
23 Honor, but suffice it to say that when they were put to their  
24 proof of the Dutchess County house, this valuable asset that  
25 supposedly Mr. Thiam was hiding, their proof falls apart.

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1 I mean, they misread documents suggesting that -- and  
2 suggested that Africa Middle East resources, DMCC had paid  
3 Mr. Thiam money in connection with the house, when in fact the  
4 only relevant entity to the house was Amer PTE Holdings. They  
5 completely misconstrued that. They said Mr. Thiam had listed  
6 himself as the owner of the house. That was based on a  
7 document filled out by a contractor who couldn't even spell  
8 Mahmoud and Fatim's names. He was doing renovation, a  
9 renovation paid for ultimately by Mr. Thiam. Mr. Thiam, of  
10 course, has had access to the house, has enjoyed the benefit of  
11 the house, but is not an owner of the house, as he has always  
12 candidly stated.

13 So, again, whack-a-mole. We knock down the house.

14 Along comes the mining companies. Oh, these are  
15 valuable mining companies, they say. Now, they have no proof  
16 at all that these are valuable mining companies. Mr. Thiam has  
17 always contended that they are worthless at this point. They  
18 were a dream, they were a hope. They are now worthless.

19 We offered your Honor a document yesterday from Amer  
20 DMCC, the Dubai company, demonstrating that they are trying to  
21 liquidate the company. Mr. Kobre yesterday said, Oh, no, we  
22 have heard from a person in the Guinea, present Guinean  
23 government that there was mining there from 2010 to 2015.

24 First of all, the present Guinean government is  
25 viciously opposed to Mr. Thiam and has been condemned by Human

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1 Rights Watch for all kind of abuses. This is a dubious source  
2 of proof.

3 But, more central, your Honor, there's been no mining  
4 there. These are prospection sites, as the lawyer told me  
5 yesterday who's been handling a lot of this abroad. He said  
6 these are lumps of land looking for a buyer. And there's no  
7 buyer.

8 And as the government -- we said in our papers  
9 Mr. Thiam has not been paid for at least three years by any  
10 interest having anything to do with the mining companies, and  
11 the government has not disputed that. In fact, there's  
12 probably a lot more than three years, but Mr. Thiam sitting in  
13 the MDC Brooklyn doesn't have a perfect memory. So the mining  
14 companies are being liquidated. They are valueless. They are  
15 a red herring.

16 So that was another whack-a-mole.

17 Then they say, well, there must be foreign bank  
18 accounts somewhere.

19 Now, they know that he has one set of remaining bank  
20 accounts. He has two bank accounts at Noor Bank in Dubai  
21 Dubai. Everything else has been shut down. They have known  
22 about Noor Bank at least since December 13 when he was  
23 arrested.

24 My guess, given the amount of manpower they have put  
25 into this case, I'm guessing that they've known about Noor Bank

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1 for a lot longer than that. But, in any event, they have known  
2 about it at least since the day of his arrest, and it has  
3 negligible amounts of money.

4 So now that we've knocked down everything else, they  
5 say, oh, there must be a foreign bank account somewhere in the  
6 world. Really, your Honor, this has gotten to be almost a  
7 theater of the absurd.

8 How is Mr. Thiam supposed to prove to the government  
9 and to this Court that in the 350-odd countries around the  
10 world none of them have a bank account of his?

11 There's absolutely no proof and there never will be  
12 proof that he has any bank account in the world that he  
13 controls right now, except Noor Bank, which has almost nothing,  
14 a few thousand bucks -- unless money has been received into  
15 that bank account since he went into jail, which is possible.  
16 When he last had access, it was negligible amounts of money.

17 Then they come back and they say, well, look at the  
18 Mashreq Bank account. Mashreq is another bank in Dubai. Well,  
19 gee, that had a lot of money a year or two ago. Yes. He's a  
20 businessman. He receives money, he spends money. He's had  
21 bank accounts. Many have been shut down; not only in the  
22 United States, but also abroad. Mashreq got shut down.

23 They come in yesterday with new exhibits. I mean,  
24 this is now seven weeks of detention. Today marks the seventh  
25 week of detention. They have had all his records. He's been

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1 bereft of his records. They have had all of his records. They  
2 come in yesterday with a mysterious, big fat document of wire  
3 transfers, and we go through it and it appears to be wire  
4 transfers into and out of the several of the bank accounts that  
5 he had in 2014, Capital One, Bank of America, I think Mashreq.  
6 And so we laboriously go through this, sitting in the holding  
7 area in the courthouse here. I don't know what they think they  
8 are making of it. Yes, he's a businessman. He receives money.  
9 He spends money.

10 And the final whack-a-mole, your Honor, is that, since  
11 they have no evidence of hidden assets, they say, well, he must  
12 be hiding something because he reported that he makes \$1.2  
13 million roughly in income a year, and that's a lot of money.  
14 So he must be hiding assets.

15 Let me say this, Judge. I am almost conflicted. I am  
16 almost conflicted about trying to analyze this in the sense  
17 that this is a burden we shouldn't even be engaging in. The  
18 government is so far from proving flight risk that I'm  
19 reluctant even to engage in it, but we have engaged in it  
20 because we thought we better leave no stone unturned here.

21 So we handed up a chart to you, your Honor, and it's a  
22 chart of annual income against expenses. And we don't purport  
23 that it's perfect or accurate to the dollar or anything like  
24 that.

25 Do you have the chart, your Honor?



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1 THE COURT: Yes, I do.

2 MR. SUMMIT: Good.

3 It's rough, but he reports \$1.2 million roughly --  
4 again, roughly -- roughly in annual income. It varies from  
5 year to year. We figure that gets reduced after the usual  
6 taxes to \$650,000.

7 Now, again, maybe there would be deductions, maybe the  
8 tax burden would be a little bit less. Who knows? But we are  
9 just trying to make the point that \$1.2 million, given his  
10 debts and his lifestyle, etc., it disappears.

11 You get aftertax income of \$650,000. Then you get  
12 rent and office rent -- he rents an office, he has employees  
13 that he pays lot of money to when he can. He has utilities and  
14 school tuition that he's massively in default on the school  
15 tuition.

16 As you see, in this chart we are not purporting that  
17 he actually makes each monthly expenditure only that these are  
18 the monthly expenditures that burden him when he is able to  
19 pay. And in the end, without going item by item, he ends up  
20 with a deficit of \$608,000 a year.

21 And the reality is he is massively in debt. And the  
22 government wants us to believe, number one, that there is a  
23 hidden asset somewhere that they have not remotely identified.  
24 It is just pure speculation. There must be a hidden asset.

25 And, number two, that in light of the debts, in light

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1 of the fact that the kids are on the verge of being thrown out  
2 of their schools, in light of the fact that eviction  
3 proceedings have begun by the landlord, Ms. Thiam met with a  
4 lawyer this morning to contest the eviction proceedings.

5 But they say, oh, no, there must be some fund out  
6 there somewhere. But Mr. Thiam is going to let his kid be  
7 thrown out of school and the family be thrown out of the house.  
8 And we have no proof of that hidden asset, but it's got to be  
9 out there somewhere.

10 Your Honor, this is really -- I have been on both  
11 sides of the aisle, prosecutor and defense. This is an  
12 extraordinary case. I have never seen anything remotely like  
13 it.

14 So they say, well, we have a smoking gun. He paid  
15 \$18,000 to Dalton from a Dubai account just last month,  
16 November 2016.

17 Yeah, he did. He did. He's allowed to do that. It  
18 was from the Noor Bank account that they know all about. I am  
19 sure they've got his statements, but if they don't, we have the  
20 November statement from Noor Bank in Dubai, his last remaining  
21 bank account.

22 He borrowed \$100,000. And, again, I'm conflicted even  
23 about going into this, because it is so extraneous. I will go  
24 into it. He borrowed \$100,000 from a friend, roughly \$100,000  
25 on an emergency basis, and it almost immediately dissipated all

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1 over the place -- to the landlord, to the school, to the New  
2 York employees who hadn't been paid for months.

3 What are we doing, Judge? It's just -- the government  
4 is acting as though it is illegal for this man to earn money  
5 and pay employees and debts. It is just insane, to be brutally  
6 frank about it.

7 I went over the transcript of Mr. Kobre's  
8 presentation, and I marked -- he didn't always set forth the  
9 time he was talking about when he referenced the events. He  
10 began with an explanation of the underlying indictment, crimes  
11 alleged from 2009 and 2010.

12 He may prove up someday to a jury to their  
13 satisfaction these alleged crimes and lies, but they bear only  
14 a little weight here. They are one of the four factors. The  
15 weight of the evidence is one of the four factors the Court is  
16 directed to consider.

17 We have said that there are huge challenges to the  
18 government. We don't think there's any quid pro quo that  
19 they'll ever prove. They are going to have massive problems  
20 with witnesses. We think this is an extremely triable case, as  
21 they say.

22 But, in any event, these are so-called lies, and  
23 Mr. Kobre kept emphasizing that Mr. Thiam lied and lied and  
24 lied. These are lies from 2009 and 2010. And I would ask you,  
25 Judge, what white collar case in our collective experience in

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1 this courtroom, which is probably many, many, many white collar  
2 cases, what white collar case did not have an allegation of  
3 lying. Maybe I could conjure up one that doesn't have a lie,  
4 but it's hard. They all have allegations of lies. If lying  
5 and allegation of lying is enough to put a person into pretrial  
6 detention, then every white collar defendant in this courthouse  
7 better get ready for pretrial detention.

8           Moreover, some of the allegations of lying are really  
9 kind of silly, if you don't mind my saying so. I mean, for  
10 example, Mr. Kobre went on at some length about the interview,  
11 the so-called interview with J.P. Morgan that Mr. Thiam had in  
12 2010. I think it was March of 2010. I believe it's Exhibit L  
13 of the Government's exhibits.

14           We are talking about -- this is one of the bases on  
15 which they said, well, he has had foreign bank accounts, look  
16 at Luxembourg and Switzerland.

17           OK. If you look at L, your Honor, it's dated March  
18 25, 2010. It's the report by an unnamed J.P. Morgan employee  
19 based on a telephone call with Mr. Thiam. Mr. Thiam describes  
20 his relations with a partner of his, and then the document goes  
21 on to say, quote, supposedly -- paraphrasing what Mr. Thiam had  
22 said to the JPM employee -- quote-unquote we have accounts in  
23 Luxembourg, in Switzerland, and Hong Kong.

24           And on that basis of that anonymous employee's March  
25 25, 2010, summary of the telephone interview, they have said,

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1 well, Mr. Thiam had an account in Luxembourg and Switzerland  
2 and he must therefore have hidden foreign accounts now.

3 Well, not only was this 2010, it was -- you can see a  
4 certain sloppiness, as the unnamed employee says that he or he  
5 she said to Mr. Thiam, What is the name of the company? and the  
6 answer was Gabon. Either the person misunderstood what a  
7 country is, that there is a country Gabon or something.

8 Mr. Thiam has never had an account in Luxembourg; he's  
9 never had an account in Switzerland. This is the quality of  
10 the evidence that we are dealing with here.

11 As one goes through the transcript, as I say, they say  
12 he lied, he lied. These are almost all events in 2010 so far  
13 as we can make out. And then they say -- they talk about the  
14 \$18,000. I've already explained that it came from a bank they  
15 are acutely aware of. What the evidentiary significance of  
16 that is beats me.

17 They talk about the defendant admits he owns a  
18 one-and-a-half-million-dollar apartment. Yes, he did admit  
19 that. He does own it. There are tax liens on that apartment  
20 in the amount of I think \$1.2 million or \$1.4 million.

21 He would put up collateral if he could. And Ms. Thiam  
22 will put up her retirement account, which is a little in excess  
23 of \$100,000. They will put up what collateral they can, but  
24 they cannot put up the Dutchess County house because they have  
25 no cognizable interest in it.

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1           Mr. Kobre referenced a 2015 bank account in Dubai and  
2 he said it had over a million dollars in November of 2015.

3           Yes. Yes, it did. So what?

4           This is a man who has run a business. He's had  
5 employees. He's had income. He's had expenses. The expenses  
6 have vastly exceeded the income, and the family's financial  
7 situation is in tatters right now.

8           So what?

9           Mr. Kobre mentioned again the Bahrain bank account  
10 that he had in 2011. Yes, we dealt with that in our papers.

11           He had a Bahrain bank account. He got a bank loan  
12 guarantee -- no, a bank loan I should say guaranteed in that  
13 bank account.

14           It's gone. He defaulted on the loan. It's gone. The  
15 bank account is closed. That was back in 2011 or '12 or '13 or  
16 something.

17           What is the meaning of all this?

18           He has had foreign bank accounts. He does have a Noor  
19 Bank account. Therefore he should be detained?

20           Mr. Kobre went on. And it was in connection with that  
21 fat exhibit that we got yesterday of wire transfers. I don't  
22 think it has a number or anything, but it was an exhibit of  
23 maybe, I don't know, it looks like about 50 pages or 60 pages.  
24 It seems to show wire transfers over the course of 2014 between  
25 various accounts.

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1           And again with some reluctance I address this exhibit.  
2           I don't know what the relevance of this exhibit is. It is hard  
3           to understand, but with Mr. Thiam's help I think we have  
4           identified most of the wire transactions.

5           There's money coming from business partners. There's  
6           money coming from consulting that he does. There's money going  
7           out to pay expenses.

8           So what? So what?

9           Mr. Kobre talked about, at the end of the hearing he  
10          talked about Blue Water International. He said in March of  
11          2016, less than a year ago, a wire from a company called Blue  
12          Water International on March 21 to Sgarbossa Construction, the  
13          construction company that did the work on the Dutchess County  
14          house.

15          Well, yes, Mr. Thiam has paid for renovations. He's  
16          way behind in the payments, and when he gets money from time to  
17          time he pays the renovators.

18          Now, then, Mr. Kobre said something very -- he  
19          referenced Habib American bank and something called Build Tech  
20          Construction. He said, Where these bank accounts are, who  
21          controls them, we don't have information on that, your Honor.

22          These are wire transfers by third parties to  
23          Mr. Thiam's bank accounts. Mr. Kobre is saying he doesn't know  
24          anything about these wire transfers. That's not surprising.  
25          He doesn't know everything about Mr. Thiam's business life. He

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1 doesn't know every business partner. He doesn't know every  
2 contract that Mr. Thiam has had since Mr. Thiam returned -- how  
3 many years ago? Almost seven years ago -- seven years ago --  
4 from Guinea.

5 So what?

6 He is a businessperson. It baffles me frankly. The  
7 government's position at this point, your Honor, quite frankly  
8 baffles me.

9 THE COURT: Mr. Summit.

10 MR. SUMMIT: Yes.

11 THE COURT: I think it's time to wrap up.

12 MR. SUMMIT: Can I wind up in about a minute?

13 THE COURT: One minute.

14 MR. SUMMIT: OK. I would like to pose a few questions  
15 to the government through your Honor, because I am not going to  
16 question them directly.

17 The government says that it -- in their memorandum  
18 they say it is plainly untrue that Mr. Thiam has no bank  
19 accounts anywhere, putting aside the Noor Bank which they've  
20 always known about.

21 I would ask them: Identify a single bank account.  
22 What are they talking about? They say it's plainly untrue.  
23 What are they talking about?

24 Number two, they say the evidence plainly shows that  
25 Mr. Thiam has substantial foreign assets. That is at page 12.



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1 Please name the assets.

2 Number three, they say that the government, that  
3 Mr. Thiam has contacts with foreign officials, government  
4 officials, in a position to provide him with travel documents  
5 and safe haven. That is at page 4. Please state it.

6 I would ask them to name a single action Mahmoud Thiam  
7 has taken to prepare his flight in all the years he's known  
8 he's under criminal investigation, a single action.

9 And then, very briefly, your Honor, we really haven't  
10 talked much about the cosigners. We have, I think, provided  
11 the declarations, one of them from an extremely distinguished  
12 American Brian Anderson. I won't take up the Court's time, but  
13 we have declarations. We have cosigners in place. I think we  
14 have some collateral in place. Pretrial for a second time has  
15 recommended release.

16 They know that he was detained. They know that their  
17 initial recommendation was opposed by the government. They  
18 know that he's been detained for seven weeks, and they come  
19 back and they say, no, we have interviewed this man, and they  
20 recommend release.

21 So I can go on about the conditions. We talked about  
22 the French situation yesterday. We talked about the Guinean  
23 situation. He hasn't set foot in that country and may never  
24 set foot in that country. The conditions are ripe. There is  
25 absolutely no basis for the continued detention.

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1 Thank you, your Honor.

2 THE COURT: Thank you.

3 Mr. Summit, just a few questions --

4 MR. SUMMIT: Yes.

5 THE COURT: -- please on your presentation.

6 MR. SUMMIT: Yes.

7 THE COURT: On the chart that you submitted today --

8 MR. SUMMIT: Yes.

9 THE COURT: -- with Mr. Thiam's gross income, you  
10 indicate that he has a deficit.

11 MR. SUMMIT: Yes.

12 THE COURT: The annual gross income that is reported  
13 there is a million two.

14 MR. SUMMIT: Yes.

15 THE COURT: Is that from the businesses?

16 MR. SUMMIT: Yes. And something occurred to me  
17 actually afterward which I meant to mention, which is that  
18 Ms. Thiam has a small business and makes I think about \$7,000 a  
19 month. I think that's roughly. So, again, this is rough. But  
20 the 1.2 million -- Mr. Thiam since 2011 has had a consulting  
21 business. He had the mining interest that he hoped to develop  
22 and that failed. As we have said, he travels a lot or has  
23 traveled a lot internationally.

24 THE COURT: All right. So the point is, this is  
25 annual gross income. This is personal income?

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1 MR. SUMMIT: This is revenue. Revenue is probably a  
2 better way to put it, because it's the money that goes not only  
3 into his pocket, but into his businesses.

4 THE COURT: That is exactly my question, as to whether  
5 that is personal income because, on the other side, you have  
6 office and business rent and you have employees.

7 MR. SUMMIT: Yes.

8 THE COURT: If this is business income, then why are  
9 you reporting --

10 MR. SUMMIT: It's the whole pack --

11 THE COURT: -- presumably business income on the other  
12 side.

13 MR. SUMMIT: It's the whole package. It's the income  
14 that he uses to run his DBA businesses. These are small DBA  
15 businesses. So he has income and he has expenses and  
16 employees. I am sure he gets some business deductions. Like I  
17 say, this is rough.

18 THE COURT: All right.

19 Second --

20 MR. SUMMIT: Yes.

21 THE COURT: -- you indicate that he owns the  
22 apartment. That's the apartment in Manhattan.

23 MR. SUMMIT: Well, let's be clear. I should have been  
24 more clear about this, your Honor. There is an apartment at --  
25 the one you own, 170 East End Avenue, that is liened up. And

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1 he does get rent. We should have included the rent.

2 (Counsel conferred with the defendant)

3 MR. SUMMIT: \$5,000, \$6,000 a month.

4 So, again, he has a little bit of money. But he  
5 pays -- he lives in a rental and pays \$24,000 a month in the  
6 rental.

7 THE COURT: Again, that was my question.

8 MR. SUMMIT: Yes.

9 THE COURT: Because there seems to be some confusion.  
10 Down below he shows a condo maintenance of 16,000 a year.

11 Which condo is that?

12 MR. SUMMIT: That's the one he owns.

13 THE COURT: All right.

14 So there seems to be some mix here of business and  
15 personal, which you're not really breaking out.

16 MR. SUMMIT: Well, we can break it out, your Honor,  
17 but the point is -- and I don't think the government even  
18 contests this -- that there is massive debt. And that the  
19 \$1,200,000, which sounds like a lot of money, isn't. You know,  
20 it's not a crime to live beyond your means. It's foolish, but  
21 it's not a crime.

22 THE COURT: Let me ask, then, the next question about  
23 Dutchess County.

24 MR. SUMMIT: Yes.

25 THE COURT: The renovations.

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1 MR. SUMMIT: Yes.

2 THE COURT: How much do those renovation expenses  
3 amount to as of this point?

4 MR. SUMMIT: I would have to ask.

5 THE COURT: How much has he paid out so far to the  
6 contractors?

7 MR. SUMMIT: The government said \$250,000.

8 (Counsel conferred with the defendant)

9 MR. SUMMIT: In excess of a million dollars. Wow.

10 THE COURT: So he has spent over a million dollars on  
11 a property that's not his, which is worth roughly \$3 million?

12 MR. SUMMIT: Three and a half million. He has had the  
13 benefit of living there on weekends.

14 THE COURT: Is it in your estimation a million dollars  
15 worth of benefit?

16 MR. SUMMIT: I have no idea, your Honor.

17 Again, this may be foolish, but let me ask what the  
18 relevance is in the sense that Dutchess County is not a hidden  
19 asset, if it's an asset. Everybody has known about Dutchess  
20 County for years. The Dutchess county property was a focal  
21 point of the civil RICO action in this courthouse that was  
22 dismissed. Dutchess County is not a secret.

23 The government has contended at various times that he  
24 is the beneficial owner. I don't think there is a case for  
25 that. And the documents that they proffered certainly don't

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1 show that.

2 THE COURT: The issue though, Mr. Summit, is just from  
3 the point of view of practicalities.

4 MR. SUMMIT: Yes.

5 THE COURT: We have a property that's worth three and  
6 a half million dollars that's not yours. Is it an arm's-length  
7 transaction where you then come in and spend a million dollars  
8 in renovating that property?

9 MR. SUMMIT: I would not say it is an arm's-length  
10 transaction. I would say it is a transaction between people  
11 who were good friends. They have had a falling out, but back  
12 in 2010 when the property was acquired, Mr. Thiam and Aquil  
13 Rajahussen were friends and business colleagues, and they did  
14 this deal.

15 There was supposed to be rent. Mr. Thiam was supposed  
16 to pay rent in order to live in that -- you know, or use the  
17 house. At some point, the renovations so exceeded the rental  
18 that they abandoned -- in other words, it no longer made any  
19 economic sense to pay rent.

20 I can tell you, Judge, that -- and again I am not sure  
21 what the relevance of this is -- let's say a court after  
22 looking -- let's say he contended that he was the beneficial  
23 owner, which he has never contended, but let's say he did  
24 contend it, and after a weeklong trial a judge concluded that  
25 he was the beneficial owner. What would be the relevance of

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1 that to this bail proceeding?

2 He can't pledge the house. He would pledge the house  
3 if he could, but he has no cognizable interest that he could  
4 pledge. I don't understand the relevance.

5 It does strike me as foolish to pay a million dollars  
6 in renovation and not have ownership interest. But, on the  
7 other hand, you could say he's had the benefit of use of the  
8 house now for seven years. That's a long time. I don't know.  
9 It's stupid, I think, economically, but what does it mean in  
10 terms of this bail proceeding? I don't understand it.

11 THE COURT: I think the government's theory is that  
12 it's not credible that he would not have some form of greater  
13 ownership and just happens to occupy the house. He could have  
14 rented a house in Dutchess County for seven years at perhaps  
15 much less than a million dollars.

16 MR. SUMMIT: Perhaps.

17 THE COURT: Perhaps.

18 MR. SUMMIT: Perhaps. They describe it as a 30-acre  
19 estate. So they're pretty impressed by it. But, Judge, again,  
20 that is their theory. Their theory is hidden ownership. They  
21 just don't have any proof of it.

22 It's the same way with bank accounts. They have no  
23 proof because the proof doesn't exist. They tried to prove his  
24 hidden ownership with all those documents and they failed.

25 THE COURT: Let me come back to another subject.

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1 MR. SUMMIT: Sure.

2 THE COURT: Yesterday I believe you said that  
3 Mr. Thiam has a debt to the IRS of \$9 million of tax liability.

4 MR. SUMMIT: I believe that's correct.

5 THE COURT: Over what period of time?

6 MR. SUMMIT: Well, when he came back from Guinea, and  
7 we have his -- the government has filed his 2010 amended tax  
8 return, or tax return I should say. We can also provide the  
9 2009 tax return. But when he came back, as I said yesterday,  
10 he engaged a great team of lawyers and accountants, Caplin &  
11 Drysdale in Washington, which has a terrific tax practice, and  
12 CBIZ, an excellent accounting firm, and they disclosed, they  
13 reported the millions of dollars in the Hong Kong bank account,  
14 the millions of dollars that are the subject of the indictment.

15 This is a peculiar money laundering scheme, your  
16 Honor, where Mr. Thiam comes back from Guinea, reveals the  
17 whole thing to his lawyers and accountants, and they report it  
18 to the IRS.

19 Anyway, he had a huge burden as a result of that  
20 reporting back in 2009, 2010.

21 THE COURT: So the \$9 million goes back to that period  
22 of time?

23 MR. SUMMIT: Yes. There was a -- 2005?

24 (Defendant conferred with counsel)

25 MR. SUMMIT: Oh, it includes additional monies I guess



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1 from 2005 to 2009. And he's had installment programs with the  
2 IRS over the years, and I think with New York State also and  
3 had to do a huge amount of disclosure in connection with that.  
4 He for some time paid the IRS debt for some time and then he  
5 couldn't anymore and so he defaulted. So he owes a huge amount  
6 to the IRS and a huge amount to the state tax authorities.

7 THE COURT: Was that debt personal or the business?

8 MR. SUMMIT: I think it's personal.

9 Yes. Personal.

10 THE COURT: In order to amass the tax debt of \$9  
11 million, the amount of income to which that would be referable  
12 would be quite substantial, wouldn't it?

13 MR. SUMMIT: The government has alleged that he  
14 received I think over \$8 million into that Hong Kong bank  
15 account way back, seven years ago, seven or eight years ago.  
16 That's the income he was declaring.

17 THE COURT: But bear with me. The tax that they  
18 assessed was \$9 million?

19 MR. SUMMIT: Well, at this point --

20 THE COURT: Or has it gone up over the years?

21 MR. SUMMIT: Yes, it continues to build.

22 You know, to the extent that the Court wishes and  
23 thinks it's relevant to have a truly accurate IRS back tax  
24 picture, I would have to bring up and get ahold of Cono  
25 Namorato and Charles Ruchelman of Caplin & Drysdale and the

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1 CBIZ guys who are the experts on his tax debt.

2 But it's huge. Again, to suggest that, the notion  
3 that he is a rich man with a hidden fund that will fund flight,  
4 which is after all what we're here about, is just fantasy.

5 THE COURT: All right. Thank you.

6 Mr. Kobre, did you wish to say anything else?

7 MR. KOBRE: Yes, your Honor. Briefly.

8 What defense counsel has put forth simply doesn't make  
9 any sense.

10 The defendant has reported \$1.2 million in income, but  
11 at the same time -- and owns a \$1.5 million apartment, owns a  
12 \$3.75 million Dutchess County estate, makes payments,  
13 apparently regularly, for construction on that estate, to  
14 expensive private school tuition. We're told now -- we have  
15 been handed this new exhibit -- apparently \$24,000 a year on  
16 cell phone expenses, and, you know, and at the same time we're  
17 told has no bank accounts anywhere and no assets anywhere. It  
18 simply doesn't make sense.

19 If I could just, your Honor, just point out a couple  
20 of small things about the new exhibit we received today. One  
21 is the government has no -- we have no records to verify any of  
22 this, in particular including the IRS back taxes, New York  
23 State back taxes and real estate taxes, which apparently total  
24 to close to \$300,000 yearly.

25 And I would also just point out for your Honor that

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1 somehow the aftertax income is calculated at a 50 percent tax  
2 rate. If you look down at the bottom, the first star there's  
3 an indication that there is an effective tax rate of 32.58. I  
4 suppose if you add up the state taxes and so on maybe you get  
5 to that, but there is no indication that any of these taxes are  
6 being paid.

7 And then I would just also finally just point your  
8 Honor to two other points. One is, with respect to the  
9 pretrial services report, that report was updated just  
10 yesterday, and I hadn't had a chance before yesterday's hearing  
11 to look at it.

12 It appears that there are other things that are in  
13 that report that Mr. Chong left out when he was interviewed.  
14 If the bolded portions of the report indicate new information,  
15 the defendant was -- when the defendant was first interviewed,  
16 it says here he advised that his father is deceased and his  
17 mother and two sisters presently reside in Guinea, making no  
18 indication of any relative in France. Apparently when the  
19 defendant's wife was interviewed, we learned now that the  
20 defendant has three sisters. While two reside in Guinea, one  
21 resides in France.

22 And that's particularly concerning, your Honor, in  
23 light of the fact that the defendant has French citizenship,  
24 and France is a country from which the government would have no  
25 recourse to extradite the defendant.

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1           The pretrial services report also tells us that the  
2 defendant has a monthly cash flow of \$60,000, but now we are  
3 being told by defense counsel that he is in hock by \$600,000 a  
4 year.

5           The defendant is a sophisticated individual. He is  
6 someone who has worked here as a banker for Merrill Lynch and  
7 UBS for a lengthy period of time, is involved, apparently we're  
8 told -- and this is also in the new portion of the pretrial  
9 services report -- engages in international travel on a monthly  
10 basis, often traveling for long periods of time.

11           And if you look at the transcript of the proceeding  
12 before Judge Francis, that travel is for worldwide business.  
13 So, I mean, if all this travel is for worldwide business and  
14 the defendant has all of these assets, all of this income, and  
15 manages to maintain the lifestyle he's maintaining, it simply  
16 can't be the case that he has does not have any bank accounts  
17 anywhere or any assets.

18           We're told today by defense counsel that there are  
19 third parties who wire monies into the defendant's accounts.  
20 He somehow borrowed -- the \$18,000 wire transfer to Dalton that  
21 occurred two weeks before the defendant's arrest from a bank  
22 account in Dubai came from we are told now \$100,000 that was  
23 wired to him which he borrowed from some unnamed friend.

24           There are third parties that wire money into his  
25 accounts, Blue Water, Build Tech, that wired money to the

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1 contractor for the Dutchess County estate and then defense  
2 counsel asks, well, the Dutchess County estate is no secret.  
3 It's been disclosed. Well, it wasn't disclosed. It wasn't  
4 disclosed to pretrial services at all, while this is a house  
5 that the government has submitted documents and the allegations  
6 in the complaint are fairly clear, is a house that is truly  
7 beneficially owned by him, and it is relevant.

8 Defense counsel keeps on asking, well, how is this  
9 relevant?

10 It's highly relevant, your Honor, to risk of flight,  
11 because if the defendant has an interest or an asset that he's  
12 not disclosing to pretrial, that is an interest or an asset  
13 that can be sold or hypothecated or cashed out in a way that  
14 would not be known to the government to obtain the funds to  
15 flee to a country, such as France, where the defendant has  
16 nationality or citizenship, or to all the other countries where  
17 the defendant has business partners, including very wealthy  
18 business partners, such as Muhammad Alabbar, who was mentioned  
19 yesterday, or other individuals throughout Africa that the  
20 defendant has ties to.

21 So for those reasons, your Honor -- I will sum up with  
22 that. The defendant has shown well beyond a preponderance of  
23 the evidence -- the government -- I'm sorry -- has shown well  
24 beyond a preponderance of the evidence that the defendant poses  
25 a grave risk of flight and should be detained.

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1 MR. SUMMIT: May I?

2 THE COURT: Very briefly, Mr. Summit. Very briefly.

3 MR. SUMMIT: Very briefly.

4 First of all, our book Exhibit 10 has the eight and a  
5 half million dollar -- actually just slightly over  
6 eight-million-dollar balance due to the IRS. So there's no  
7 question about that.

8 Mr. Kobre talks about the \$24,000 cell bill. Most of  
9 these figures come straight out of the pretrial reports, and  
10 twice they have recommended release, your Honor. The second  
11 time with the GPS monitoring, which is fine and very powerful  
12 in terms of security.

13 Again, Mr. Kobre says we don't -- he says we don't  
14 know where these wire transfers come from. We don't know where  
15 this loan comes from.

16 Well, I will give you the name, Hans Siddharth, a  
17 friend and business partner of Mr. Thiam's in Dubai. Mr. Thiam  
18 was in a crisis, his kids were being thrown out of Dalton, the  
19 family was being thrown out of the apartment, and borrowed a  
20 hundred thousand dollars from Hans Siddharth.

21 By the way, those two entities that Mr. Kobre  
22 mentioned yesterday and today, saying the government doesn't  
23 know who these are, as if there is some entitlement to know  
24 every business colleague of Mr. Thiam, those are Hans  
25 Siddharth's entities.

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1           Mr. Thiam and Hans Siddharth do some business  
2 together. They have a friendly relationship. Mr. Siddharth  
3 runs a shipping line, he has some wealth apparently, and he  
4 lent Mr. Thiam \$100,000 in a crisis.

5           So what?

6           I mean, this is -- well, I guess I have said what I  
7 can say, your Honor and I perhaps should sit down.

8           I find this whole proceeding on the government's part  
9 truly extraordinary and a remarkable exercise in attempting to  
10 shift a burden that cannot be shifted that way.

11          THE COURT: All right. Thank you.

12          I thank the parties for a very thorough presentation  
13 and the extraordinarily detailed submissions they have made.  
14 Of course, they were very helpful.

15          On the basis of the material and the presentations  
16 that have been made at this hearing yesterday and today, I am  
17 persuaded that the government has met its burden by a  
18 preponderance of the evidence, and I am going to deny the  
19 application for bail.

20          There are many issues that the defendant's responses  
21 raised that do not answer the concerns raised by the government  
22 concerning whether or not the defendant has undisclosed assets  
23 that might provide for means of escape or of paying for living  
24 somewhere else.

25          There are questions concerning his dual citizenship

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1 and to what extent that might be grounds for the defendant to  
2 find a means to escape somewhere else.

3 So, on those bases, I will deny the application.

4 Let me ask the government and Mr. Summit whether an  
5 alternative might be for Mr. Thiam to be released on house  
6 arrest with monitoring and private security around the clock.

7 Mr. Kobre?

8 MR. KOBRE: Just one moment, your Honor.

9 THE COURT: Yes.

10 MR. KOBRE: Your Honor, I mean, I think our position  
11 even just sort of preliminarily to whether that would  
12 guarantee -- you know, whether that would reasonably assure the  
13 defendant's appearance, I mean, you know, the government, you  
14 know, that would be extraordinarily expensive, an expense I  
15 don't think the government would be able to bear, and it  
16 doesn't sound like the defendant can bear it. So I don't know  
17 that it's possible.

18 THE COURT: I recognize the limitations of that, given  
19 what the defendant has indicated are his finances, but I just  
20 put that out as something that perhaps the parties could think  
21 about.

22 And I will deny defendant's motion, but without  
23 prejudice to coming back to the Court -- bear in mind this case  
24 is not on this Court's docket, it is on that of Judge Cote --  
25 and perhaps come back to Judge Cote with a proposal that the



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1 parties might be able to work out along those lines.

2 All right.

3 MR. KOBRE: Thank you, Judge.

4 THE COURT: Thank you.

5 (Adjourned)